THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

LOCAL RULES OF PRACTICE
AMENDMENTS

Effective December 1, 2000

DEDICATION

We dedicate these Local Rules to the memory of the Honorable Richard B. Kellam who was our beloved friend and respected colleague for the almost thirty years of his exemplary service as a member of the federal judiciary. We are grateful for having known him, enriched for having served with him and inspired by his tireless commitment to justice and to this Court.

TABLE OF CONTENTS

LOCAL RULES OF PRACTICE

LOCAL CRIMINAL RULES

LOCAL ADMIRALTY RULES

LOCAL RULES

RULE 1

SCOPE OF RULES

(A) **Application:** These rules, made pursuant to the authority granted by Fed. R. Civ. P. 83 and Fed. R. Crim. P. 57 for the United States District Courts, as prescribed by the Supreme Court of the United States, so far as not inconsistent therewith, shall apply in all civil actions, criminal cases, and other proceedings in the United States District Court for the Eastern District of Virginia.

(B) **Statutory Rules:** 1 U.S.C. §§ 1-5, inclusive, shall, as far as applicable, govern the construction of these rules.

(C) **Effective Date of Amendments:** Amendments to these Local Rules shall take effect on the date of entry of the order authorizing the amendments and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all then pending proceedings.

RULE 3

AREA AND DIVISIONS

(A) **Area:** The Eastern District of Virginia consists of the counties, cities and towns specified in 28 U.S.C. § 127, and the places for holding Court within the district are prescribed as Alexandria, Newport News, Norfolk and Richmond.

(B) **Divisions:** This district shall be divided into four divisions to be designated as the Alexandria, Newport News, Norfolk and Richmond Divisions; the place for holding Court for each of said divisions shall be the city whose name the division bears, and the territory comprising, and embraced in, each of the said divisions shall be as follows:

(1) The Alexandria Division shall consist of the City of Alexandria and the Counties of Loudoun, Fairfax, Fauquier, Arlington, Prince William, and Stafford and any other city or town geographically within the exterior boundaries of said counties.

(2) The Newport News Division shall consist of the Cities of Newport News, Hampton and Williamsburg, and the Counties of York, James City, Gloucester, Mathews, and any other city or town geographically within the exterior boundaries of said counties.

(3) The Norfolk Division shall consist of the Cities of Norfolk, Portsmouth, Suffolk, Franklin, Virginia Beach, Chesapeake, and Cape Charles, and the Counties of Accomack, Northampton, Isle of Wight, Southampton, and any other city or town geographically within the exterior boundaries of said counties.

(4) The Richmond Division shall consist of the Cities of Richmond, Petersburg, Hopewell, Colonial Heights and Fredericksburg, and the Counties of Amelia, Brunswick, Caroline, Charles City, Chesterfield, Dinwiddie, Essex, Goochland, Greensville, Hanover, Henrico, King and Queen,

King George, King William, Lancaster, Lunenburg, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Spotsylvania, Surry, Sussex, Westmoreland, and any other city or town geographically within the exterior boundaries of said counties.

(5) All of the waters, and the lands under such waters, adjacent and opposite to any city, county or town shall be a part of the division of which said city, county or town is a part, and wherever there are any waters between any city, county or town which are in different divisions, then such waters and land under them shall be considered to be in both divisions.

(6) In the event of any annexation or merger of any cities and/or counties the land lying within the merged or annexed area shall be deemed within the exterior boundaries of the original city or county to the same intent and purpose as if the annexation or merger had not occurred, unless otherwise modified by local rule.

(C) **Division in Which Suits to Be Instituted:** Civil actions for which venue is proper in this district shall be brought in the proper division, as well. The venue rules stated in 28 U.S.C. § 1391 et seq. also shall apply to determine the proper division in which an action shall be filed. For the purpose of determining the proper division in which to lay venue, the venue rules stated in 28 U.S.C. § 1391 et seq. shall be construed as if the terms "judicial district" and "district" were replaced with the term "division." However, the Clerk's office in any division shall accept for filing new complaints which, venue excepted, are in proper form. Such complaints shall be filed on the day submitted, stamped as having been "filed," deemed "filed" for all purposes, and forwarded to the division where venue lies for further proceedings.

RULE 4

SERVICE AND RETURN OF SUMMONS--ABATEMENT

(A) **Service and Abatement:** If service of a summons and complaint is sought other than under Fed. R. Civ. P. 4(d) but is not effected, the Marshal or other person responsible for effecting service shall return the summons and complaint to the Clerk with an endorsement thereon stating the reasons for failure to effect service.

All waivers of service obtained under Fed. R. Civ. P. 4(d) shall be filed within five (5) days after they are returned to plaintiff. Unless, within one hundred and twenty (120) days after the complaint is filed, a defendant has been served or has appeared or has waived service, the Clerk shall abate the action and dismiss it without prejudice as to such defendant(s) after having given, but received no response to, the notice required by Fed. R. Civ. P. 4(m).

Where the United States, its officers, corporations or agencies are served by mail pursuant to Fed. R. Civ. P. 4(i)(1)(A), service shall be effective on the date of the postmark or on the date received if there is no postmark or it is illegible. The United States Attorney shall file a certificate reporting the postmark and receipt dates.

(B) **Withholding Service:** Requests by a party to withhold the service of a summons and complaint, or a third-party summons and complaint upon parties as to whom waiver of service provisions are inapplicable shall not be granted by the Clerk without leave of Court first obtained; provided, however, that a party may request the Clerk to withhold the issuance and service of an *in rem* process upon advising the Clerk that the property subject to arrest or attachment is not within the jurisdiction or that arrangements have been made for the acceptance of service.

(C) **Civil Cover Sheet:** The Clerk shall require a complete and executed AO Form JS 44(a), Civil Cover Sheet, to accompany each civil action filed except as to actions filed by prisoners and other litigants proceeding *pro se*.

RULE 7

MOTIONS--CONTINUANCES--COURT ORDERS

(A) **Grounds and Relief to be Stated:** All motions shall state with particularity the grounds therefor and shall set forth the relief or order sought.

(B) **Address and Telephone Number of Attorney And *Pro Se* Litigants:** All pleadings and motions shall include the attorney's office address and telephone number. All pleadings filed by non-prisoner litigants proceeding *pro se* shall contain an address where notice can be served on such person and a telephone number where such person can be reached or a message left. All pleadings filed by prisoners proceeding *pro se* shall contain an address where notice can be served on such person.

(C) **Use of Forms:** Motions and interrogatories on printed forms, multigraphed, mimeographed, or in any manner reproduced by machine process, other than a typewriter, computer or word processor, shall not be permitted unless the attorney filing same has deleted all extraneous matter and certifies that he or she has carefully reviewed the remaining portions and in good faith believes that the contents are pertinent to the case.

(D) **Return Date:** Except as otherwise provided by an order of the Court or by these Rules, all motions shall be made returnable to the time obtained from and scheduled by the Court for a hearing thereon. The moving party shall be responsible to set the motion for hearing or to arrange with opposing counsel for submission of the motion without oral argument. Unless otherwise ordered, a motion shall be deemed withdrawn if the movant does not set it for hearing (or arrange to submit it without a hearing) within thirty (30) days after the date on which the motion is filed. The non-moving party also may arrange for a hearing. Before endeavoring to secure an appointment for a hearing on any motion, it shall be incumbent upon the counsel desiring such hearing to meet and confer in person or by telephone with his or her opposing counsel in a good-faith effort to narrow the area of disagreement. In the absence of any agreement, such conference shall be held in the office of the attorney nearest the Court in the division in which the action is pending. In any division which has a regularly scheduled motions day, the motion should be noticed for the first permissible motions day.

(E) **Briefs Required:**

(1) All motions, unless otherwise directed by the Court and except as noted hereinbelow in subsection 7(E)(2), shall be accompanied by a written brief setting forth a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies. Unless otherwise directed by the Court, the opposing party shall file a responsive brief and such supporting documents as are appropriate, within eleven (11) days after service and the moving party may file a rebuttal brief within three (3) days after the service of the opposing party's reply brief. No further briefs or written communications may be filed without first obtaining leave of Court.

(2) Briefs need not accompany motions: (a) for a more definite statement; (b) for an extension of time to respond to pleadings, unless the time has already expired; and (c) for a default judgment.

(3) Except for good cause shown in advance of filing, opening and responsive briefs, exclusive of affidavits and supporting documentation, shall not exceed thirty (30) 8-1/2 inch x 11 inch pages double-spaced using 10 pitch typeface and rebuttal briefs shall not exceed twenty (20) such pages.

(F) **Continuances:** Motions for continuances of a trial or hearing date shall not be granted by the mere agreement of counsel. Any such motion will be considered by the Court only in the presence of all counsel, and no continuance will be granted other than for good cause and upon such terms as the Court may impose.

(G) **Filing of Pleadings:** After the filing of the complaint, all pleadings, motions, briefs and filings of any kind must be timely filed with the Clerk’s office of the division in which the case is pending.

(H) **Extensions:** Any requests for an extension of time relating to motions must be in writing and, in general, will be looked upon with disfavor.

(I) **Determination of Motions Without Oral Hearing:** In accordance with Fed. R. Civ. P. 78, the Court may rule upon motions without an oral hearing.

(J) **Motions Against *Pro Se* Parties:** It shall be the obligation of counsel for any party who files any dispositive or partially dispositive motion addressed to a party who is appearing in the action without counsel, to attach to, or include at the foot of, the motion, a warning consistent with the requirements of *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975). The warning shall state that:

(1) The *pro se* party is entitled to file a response opposing the motion and that any such response must be filed within twenty (20) days of the date on which the dispositive or partially dispositive motion is filed; and

(2) The Court could dismiss the action on the basis of the moving party's papers if the *pro se* party does not file a response; and

(3) The *pro se* party must identify all facts stated by the moving party with which the *pro se* party disagrees and must set forth the *pro se* party's version of the facts by offering affidavits (written statements signed before a notary public and under oath) or by filing sworn statements (bearing a certificate that it is signed under penalty of perjury); and

(4) The *pro se* is also entitled to file a legal brief in opposition to the one filed by the moving party.

(K) **Court Orders--Objections Noted:** Whenever counsel shall endorse an order and note with such endorsement any objection to the order, unless the grounds of such objection have been previously stated in the record, or unless the grounds are set forth in writing at the time and as a part of the endorsement, or a request made to the Court for a hearing, it will be assumed the objection is without effect and waived.

RULE 7.1

FINANCIAL DISCLOSURE

(A) **Required Disclosure.** A nongovernmental corporation, partnership, trust, other similar entity that is a party to, or that appears in, an action or proceeding in this Court shall:

(1) file two copies of a statement that

a. identifies all its parent, subsidiary, or affiliate entities (corporate or otherwise), that have issued stock or debt securities to the public, and also identifies any publicly held entity (corporate or otherwise) that owns 10% or more of its stock, or

b. states that there is nothing to report under Rule 7.1(A)(1)(a); and

(2) file a supplemental statement containing such additional information as may be from time to time required by the Judicial Conference of the United States or this Court.

(B) **Time for Filing**. A statement or form required by Rule 7.1(A) shall be filed within fourteen (14) days of the party's first appearance, pleading, petition, motion, response, or other request addressed to the Court, except that the statement or form required by Rule 7.1(A) shall be filed simultaneously with any request for emergency relief such as a motion for temporary restraining order. A supplemental statement or form shall be filed promptly upon any change in the circumstances that Rule 7.1(A) requires the party to identify.

(C) **Statement Delivered to Judge.** The Clerk shall deliver a copy of the Rule 7.1(A) disclosure to each judge acting in the action or proceeding.

RULE 16

PRETRIAL CONFERENCE

(A) **Applicability of Rule 16:** Proceedings upon a defendant's default and matters involving habeas corpus petitions, other *pro se* prisoner petitions, bankruptcy proceedings, condemnation cases, motions to vacate, reduce or modify sentences, probation violations, forfeitures, and reviews from administrative agencies, are not subject to the provisions of this rule, but the judge to whom any such case is assigned may, in his or her discretion, follow the procedure outlined herein in whole or in part in any case. (See, Fed. R. Civ. P. 16(b)).

(B) **Initial Pretrial Conference and Order and Scheduling Order:** In all other civil actions, as promptly as possible after a complaint or notice of removal has been filed, the Court shall schedule an initial pretrial conference to be conducted in accordance with Fed. R. Civ. P. 16(b), and in addition thereto, or in lieu thereof, not later than ninety (90) days from first appearance or one hundred and twenty (120) days after service of the complaint, the Court shall enter an order fixing the cut-off dates for the respective parties to complete the processes of discovery, the date for a final pretrial conference and, whenever practicable, the trial date, and providing for any other administrative or management matters permitted by Fed. R. Civ. P. 16 or by law generally.

The parties and their counsel are bound by the dates specified in any such orders and no extensions or continuances thereof shall be granted in the absence of a showing of good cause. Mere failure on the part of counsel to proceed promptly with the normal processes of discovery shall not constitute good cause for an extension or continuance.

RULE 26

DISCOVERY AND EXPERT DISCLOSURE

A. (1) Pursuant to Federal Rule of Civil Procedure (hereinafter "Rule") 26(f), in this District it may be required by Order that: (i) the Scheduling and Planning Conference outlined in Rule 16(b) be held fewer than 21 days after the conference required by Rule 26(f); and (ii) the written report outlining the discovery plan due under Rule 26(f) be filed fewer than 14 days after the conference between the parties or the parties be excused from submitting a written report and be permitted to report orally on their discovery plan at the conference required by Rule 16(b).

(B) In this District, U.S. Magistrate Judges are authorized to conduct the Scheduling and Planning Conference and issue the scheduling order for which provision is made in Rule 16(b).

(3) A deposition taken without leave of Court pursuant to a notice under Fed. R. Civ. P. 30(a)(1) before the time required by Fed. R. Civ. P. 12 for filing an answer or responsive pleading shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition.

(B) **Requirement of a Writing:** All objections to interrogatories, depositions, requests, or applications under Fed. R. Civ. P. 26 through 37, as well as all motions and replies thereto concerning discovery matters, shall be in writing. If time does not permit the filing of a written motion, the Court may, in its discretion, waive this requirement.

(C) **Objections to Discovery Process:** Unless otherwise ordered by the Court, an objection to any interrogatory, request, or application under Fed. R. Civ. P. 26 through 37, shall be served within fifteen (15) days after the service of the interrogatories, request, or application, except that a defendant may serve any such objection within thirty (30) days after service of the summons and complaint upon that defendant and, within forty-five (45) days after service of the summons and complaint, shall serve responses to interrogatories, requests or applications that are served with the complaint and as to which no objection is made. The Court may allow a shorter or longer time. Any such objection shall be specifically stated. Any such objection shall not extend the time within which the objecting party must otherwise answer or respond to any discovery matter to which no specific objection has been made.

(D) **Expert Disclosures:**

(1) Agreement Upon Disclosure: Counsel are encouraged to agree upon the sequence and timing of the expert disclosures required by Fed. R. Civ. P. 26(a)(2). All such agreements must be in the form of a consent order entered by the Court.

(2) Timing of Mandatory Disclosure: Absent such a consent order or unless ordered otherwise, the disclosures required by Fed. R. Civ. P. 26(a)(2) shall be made first by the plaintiff not later than sixty (60) days before the earlier of the date set for completion of discovery or for the final pretrial conference, if any; then by the defendant thirty (30) days thereafter. Plaintiff shall disclose fifteen (15) days thereafter any evidence that is solely contradictory or rebuttal evidence to the defendant's disclosure.

(3) Completion of Disclosure: Whether accomplished by agreement pursuant to subsection 26(D)(1) or pursuant to the schedule set by subsection 26(D)(2), all parties shall complete all forms of expert

disclosure and discovery not later than thirty (30) days after the date upon which plaintiff is, or would be, required by subsection 26(B)(2) to disclose contradictory or rebuttal evidence.

(4) General Provisions: For purposes of this rule, counter-claim plaintiffs, cross-claimants and third-party plaintiffs shall be plaintiffs as to all elements of the counter-claim, cross-claim or third-party claim. Answers to interrogatories directed at clarification of the written reports of expert witnesses disclosed pursuant to Fed. R. Civ. P. 26(a)(2) shall be due fifteen (15) days after service.

RULE 30

DEPOSITIONS--EXPENSES--SUMMARIES--REVIEWING DEPOSITIONS

(A) **Discovery:** Any party, or representative (officer, director or managing agent), of a party, filing a civil action in the proper division of this Court, must ordinarily be required, upon request, to submit to a deposition at a place designated within the division. Exceptions to this general rule may be made on order of the Court when the party, or representative of a party, is of such age or physical condition, or special circumstances exist, as may reasonably interfere with the orderly taking of a deposition at a place within the division. A defendant, who becomes a counterclaimant, cross-claimant or third-party plaintiff, shall be considered as having filed an action in this court for the purpose of this Rule. This subsection shall not apply to an involuntary plaintiff nor an interpleader plaintiff.

(B) **Recording and Transcribing Transcript of Discovery Deposition:** The expense of recording a deposition shall be paid by the party seeking to take same. The expense of transcribing the deposition shall be paid by any party ordering the preparation of the original. Any other party desiring a copy of said deposition shall pay for same at the copy rate. Parties may, by agreement, equally share the costs of attendance and transcribing, including such copies as desired.

(C) **Attorneys' Fees:** Unless the services of associate counsel are retained, in lieu of travel expense, it is not the policy of the Court to make an allowance of counsel fees in attending any deposition, except to the extent provided by statute, and otherwise in this Rule, but the Court reserves the right to make a reasonable allowance where the circumstances of the case may justify same.

(D) **Security for Travel Expense:** Any party desiring to take the deposition of a witness (not a party or representative of a party) for discovery or use at trial, or a party or representative of a party as ordered by the Court under (A), beyond a division of the Court in which the action is pending, shall, if such testimony cannot be readily procured in another manner, prepay or secure the reasonable cost of travel of not more than one opposing counsel to the place of taking the deposition and return therefrom, but in no event shall the reasonable costs

of travel exceed an amount which would reasonably be required to be paid to associate counsel in the area in which the deposition is being
taken unless insufficient time is allowed in giving the notice to take depositions.

(E) **Travel Expense:** The "costs of travel" as provided in this Rule shall consist of the reasonable costs of travel by air or other public transportation, or an allowance for travel by private automobile at the prevailing rate per mile as may be provided for federal government employees on official business, whichever means of transportation is reasonably selected and used, including the cost of transportation from the office or residence to the terminal of the public transportation and from the destination terminal to the place of the taking of the deposition, and reasonable overnight accommodations, if deemed reasonably necessary, and return. The Court may, in its discretion, make a reasonable allowance for food.

The "cost of travel," as herein defined, shall apply to any witness (not a party or the representative of a party) required to attend the taking of a deposition. As to any witness attending a trial or hearing in a civil action , pursuant to Fed. R. Civ. P. 45((b)(2), the expense of such "cost of travel" shall be taxed as costs if said witness testifies or if it is reasonably necessary for the witness to appear, but said "costs of travel" shall be limited to what would have been expended if said witness resided at one hundred (100) miles from the place of the trial or hearing, together with such reasonable allowance, if required for the purpose of the witness testifying, for overnight accommodations and food. If the witness resided within one hundred (100) miles of the place of trial or hearing, the "cost of travel" shall be limited to the mileage and attendance fees as provided by law.

(F) **Reviewing Depositions:** Whenever depositions are expected to be presented in evidence, counsel shall, before the final pretrial conference or, if same are not then available, before the day of trial, review such depositions and (1) extract therefrom a short statement of the qualifications of any expert witness to read to the jury, (2) eliminate unnecessary and/or irrelevant matters, and (3) eliminate all objections and statements of counsel to avoid reading same to a jury. In the event counsel are unable to agree on what shall be eliminated, they shall submit to the Court for a ruling thereon before the

date of trial. Failure to do so will constitute a waiver of objections.

(G) **Summaries of Depositions:** In all nonjury cases, counsel shall attach to any deposition a summary of the examination of the testimony of each witness, thereby pointing out the salient points to be noted by the Court.

(H) **Reasonable Notice:** As a general rule, eleven (11) days in advance of the contemplated taking of a deposition shall constitute reasonable notice of the taking of a deposition in the continental United States, but this will vary according to the complexity of the contemplated testimony and the urgency of taking the deposition of a party or witness at a particular time and place.

RULE 37

(A) **Motions to Compel:** After a discovery request is objected to, or not complied with, within time, and if not otherwise resolved, it is the responsibility of the party initiating discovery to place the matter before the Court by a proper motion pursuant to Fed. R. Civ. P. 37, to compel an answer, production, designation or inspection. Such motion must be accompanied by a brief as required by Local Rule 37(B).

(B) **Briefing of Discovery Motions:** Unless otherwise ordered, the scheduling and page limitation provisions of Local Rule 7(E) shall apply to all discovery motions; provided that the Court may elect to decide discovery motions without briefing.

(C) **Compliance with Discovery Orders:** After the Court has ruled on a discovery motion, any answer, production, designation, inspection, or examination required by the Court shall be completed within eleven (11) days after the entry of the order on the motion, unless otherwise ordered by the Court.

(D) **Failure to Comply with Order:** A party objecting to the failure of another party to comply with an order on a discovery motion shall be responsible for bringing the non-compliance before the Court by a proper motion for supplementary relief pursuant to Fed. R. Civ. P. 37.

(E) **Consultation Among Counsel:** Counsel shall confer to decrease, in every way possible the filing of unnecessary discovery motions. No motion concerning discovery matters may be filed until counsel shall have conferred in person or by telephone to explore with opposing counsel the possibility of resolving the discovery matters in controversy. The Court will not consider any motion concerning discovery matters unless the motion is accompanied by a statement of counsel that a good faith effort has been made between counsel to resolve the discovery matters at issue.

(F) **Extensions:** Depending upon the facts of the particular case, the Court in its discretion may, upon appropriate written motion by a party, allow an extension of time in excess of the time provided by the Federal Rules of Civil Procedure, these Rules, or previous Court order, within which to respond to or complete discovery or to reply to discovery motions. Any agreement between counsel relating to any extension of time is of

no force or effect; only the Court, after appropriate motion directed thereto, may grant leave for any extension of time. Unless otherwise specifically provided, such extension will be upon the specific condition that, regardless of what may be divulged by such discovery, it will not in any manner alter the schedule of dates and procedure previously adopted by the Court in the particular case.

(G) **Unnecessary Discovery Motions or Objections:** The presentation to the Court of unnecessary discovery motions, and the presentation to another party or non-party of unnecessary discovery requests of any kind, as well as any unwarranted opposition to proper discovery proceedings, will subject such party to appropriate remedies and sanctions, including the imposition of costs and counsel fees.

(H) **Sanctions:** Should any party or attorney fail to comply with any of the provisions of this Local Rule 37, or otherwise fail or refuse to meet and confer in good faith in an effort to narrow the areas of disagreement concerning discovery, sanctions provided by Fed. R. Civ. P. 37, may be imposed.

RULE 38

DEMAND FOR JURY TRIAL

Any demand for jury in a civil action must be in writing and filed strictly in accordance with Fed. R. Civ. P. 38. Removal actions shall be governed by Fed. R. Civ. P. 81(C). In the event another party is added, the additional party may demand trial by jury at any time within twenty (20) days after such party is served with process or summons.

RULE 45

SUBPOENAS

(A) **Issuance of Subpoenas:** Attorneys of record in an action, or associates in firms of record, as officers of the Court, shall issue all subpoenas in the action as authorized by Fed. R. Civ. P. 45(a)(3).

Parties appearing *pro se* may apply for subpoenas in their own behalf. All such requests by such party must be accompanied by a memorandum setting forth the names and addresses of witnesses or the documents requested and why and for what purpose or purposes. All such requests by *pro se* parties shall be referred to a Judge or Magistrate Judge of this Court who shall first determine whether the requested subpoena shall issue; provided, however, that such determination shall not preclude any witness or person summoned or other interested party from later contesting the subpoena.

(B) **Return Date of Subpoenas:** All subpoenas shall be made returnable to the place, date and time of trial or hearing, unless otherwise ordered by the Court.

(C) **Proof of Service of Subpoenas:** In civil actions, the party issuing a subpoena for a trial, a hearing or contempt proceedings, or when it is otherwise necessary to file proof of service, shall file proof of service in the form required by Fed. R. Civ. P. 45(b)(3). Any such proof of service shall be filed promptly and, in any event, within the time during which the person served must respond to the subpoena. Lawyers and parties proceeding *pro se* shall file with the proof of service in civil actions, or before a witness is required to testify in criminal cases, a certificate that all required witness fees and expenses were served with the subpoena requiring the attendance of the witness.

(D) **Subpoenas to Officials:** Without first obtaining permission of the Court, no subpoena shall issue for the attendance at any hearing, trial or deposition of (1) the Governor, Lieutenant Governor, or Attorney General of any State; (2) a Judge of any Court; (3) the President or Vice-President of the United States; (4) any member of the President's Cabinet; (5) any Ambassador or Consul; or (6) any military officer holding the rank of Admiral or General.

(E) **Timely Service of Subpoenas for Trial or Hearings:** Except as otherwise ordered by the Court for good cause shown, subpoenas for attendance of witnesses at hearings or trials in civil actions shall be served not later than fourteen (14) days before the date of the hearing or trial.

(F) **Deposition Subpoenas:** Proof of service of a notice to take depositions as provided in Fed. R. Civ. P. 30(b) and 31(b) constitutes sufficient authorization for the issuance of a subpoena by the Clerk for the district in which the deposition is to be taken for the attendance of persons named or described therein. Except as otherwise ordered by the Court for good cause shown, subpoenas compelling attendance at a deposition shall be served not later than eleven (11) days before the date of the deposition. No subpoena for the taking of depositions shall be issued by the Clerk unless there be exhibited to the Clerk a copy of the notice to take deposition together with a statement of the date and manner of service and of the names of the persons served, certified by the person who made service.

(G) **Civil Actions--Place of Taking Deposition:** Except with respect to a witness in a foreign country (See 28 U.S.C. § 1783), the Clerk shall, upon request, issue a subpoena for taking a deposition requiring the appearance of any party or witness at any place within the district or 100 miles from the place where that person resides, is employed, or transacts business in person, or is served, or at such other convenient place as is fixed by an order of court.

(H) **Subpoenas in Blank:** Whenever there is a question as to whether or not a subpoena in blank should be issued by the Clerk, the applicant shall be referred to a judge of this Court for a final determination. Before issuing a subpoena in blank, the Clerk shall determine the actual pendency of the action and the date and time set for hearing or trial. Except for good cause shown, a blank subpoena returnable in one division will not be issued out of another division. Blank subpoenas shall recite the title and number of the case and shall be completed in every detail except for the name and address of the witness. Returns of service shall be made promptly and filed with the Clerk. Service of subpoenas in blank shall be subject to the requirements of these Rules.

RULE 47

JURORS

(A) **Jury Lists:**

(1) The entire list of names drawn to serve a division of the Court for a particular period and for a particular action or case, together with the questionnaires prepared by the jurors, may be disclosed to counsel for the parties, or to any party acting *pro se,* unless the Court directs otherwise. However, no juror shall be approached, either directly or through any member of his or her immediate family, in an effort to secure information concerning such juror.

(2) When the jurors report for duty at a session of Court, the Clerk shall, upon request, make available to counsel for the parties, or to any party acting *pro se,* a list of such jurors.

(B) **Peremptory Challenges:** In civil actions where there are several plaintiffs and/or several defendants, and in a criminal case where there is more than one defendant, the Court may allow each or both sides more than the usual number of peremptory challenges permitted by law upon motion made at least twenty-one (21) days before the date set for commencement of trial. Untimely motions will not be entertained.

RULE 48

NUMBER OF JURORS--CIVIL ACTIONS

Unless otherwise provided by law, the jury in any civil action shall consist of at least six (6), but no more than twelve (12), persons.

RULE 51

PROPOSED JURY INSTRUCTIONS AND VOIR DIRE

Except as provided otherwise in a pretrial or scheduling order, in all cases tried to a jury, whether civil or criminal, the parties shall submit proposed instructions and voir dire questions to the Court in duplicate, with a copy to opposing counsel, at least five (5) business days before the scheduled trial date. Each instruction shall be set forth on a separate page and shall be numbered and identified appropriately by the party submitting it and the original shall bear at its foot a citation of the authority in support of the instruction. Instructions shall be filed as a group together with a cover sheet in pleading form and a certificate of service. Instructions filed with the Court must be proffered to the Court during the instruction conference and ruled upon by the Judge in order to become a part of the official record for appeal.

RULE 54

COSTS--NOTICE OF APPEAL--JURY COSTS

(A) **Payment in Advance:** All fees and costs due the Clerk shall be paid in advance except as otherwise provided by law.

(B) **Stipulation for Costs for Certain Admiralty and Maritime Claims:** No stipulation for costs for complaints, petitions, counterclaims, and cross-claims, and the filing of an answer, appearance or claim shall be required, unless specifically ordered by the Court, except where now or hereafter required by statute, the Federal Rules of Civil Procedure, or the Supplementary Rules for Certain Admiralty and Maritime Claims heretofore or hereafter adopted by Congress or through the Rule Making process.

(C) **Bond Premiums:** If costs are awarded by the Court, the reasonable premiums or expense paid on any bond or other security given by the prevailing party shall be taxed as part of the costs.

(D) **Taxable Costs And Procedure For Taxing Costs:**

(1) Bill of Costs. The party entitled to costs shall file a bill of costs as provided in 28 U.S.C. § 1920 and § 1924 within eleven (11) days, unless such time is extended by order.

Such bill of costs shall distinctly set forth each item thereof so that the nature of the charge can be readily understood. An itemization and documentation for requested costs in all categories shall be attached to the cost bill. Costs will be disallowed if proper documentation is not provided.

(2) Objection to the Bill of Costs. A party from whom costs are sought may serve an opposition to the bill of costs within eleven (11) days after service of the bill of costs. The opposition shall identify each item objected to, and the grounds for the objection. Within five (5) days

thereafter, the prevailing party may serve responses to the objections.

If no objections are filed, the Clerk shall promptly proceed to tax the costs and shall allow such items specified in the bill of costs as are properly chargeable as costs. The Clerk shall give notice of such action to the parties or their counsel. The Court shall promptly review the action of the Clerk upon timely motion under Fed. R. Civ. P. 54(d). In the absence of a timely motion the action of the Clerk is final.

If objections are filed and the Clerk shall be unable to determine all or some of the properly chargeable costs, the application for such costs shall be referred to the judge who presided over the trial or, at the discretion of that judge, to a United States Magistrate Judge for report and recommendation under 28 U.S.C. § 636(b)(1)(B).

(E) **Excessive and Unnecessary Costs:** Any party applying for costs which are not recoverable or which are excessive shall be subject to sanction under Fed. R. Civ. P. 11.

(F) **Notice of Appeal, Fees:**

(1) Where there are multiple parties seeking to appeal jointly (e.g., where cases are consolidated or tried together or decided by a single judgment or order) and a joint notice of appeal is filed, the Clerk shall collect only one fee and only one cost bond if required. Where separate notices of appeal are filed, the Clerk shall collect separate fees and require separate bonds.

(2) Separate notices of appeal, separate fees, and separate bonds are required of a party who exercises a right of appeal under Fed. R. App. P. 4(a)(3), within fourteen (14)

days of the date on which the first notice of appeal was filed.

(G) **Jury Costs:** Whenever any civil action scheduled for jury trial is settled, or otherwise disposed of in advance of the actual trial, then, except for good cause shown, juror costs, including service fees, mileage and per diem, shall be assessed equally against the parties and their counsel or otherwise assessed as directed by the Court, unless the Clerk is notified at least one full business day prior to the day on which the action is scheduled for trial in time to advise the jurors that it will not be necessary for them to attend.

Likewise, when any civil action, proceeding as a jury trial, is settled at trial in advance of the verdict, then, except for good cause shown, all jury costs, service fees, mileage and per diem shall be assessed equally against the parties and their counsel, or otherwise assessed as directed by the Court.

RULE 56

SUMMARY JUDGMENT

(A) **Summary Judgment--Time of Filing:** No motion for summary judgment will be considered unless it is filed and set for hearing or submitted on briefs, within a reasonable time before the date of trial, thus permitting a reasonable time for the Court to hear arguments and consider the merits after completion of the briefing schedule specified in Rule 7(E)(1).

(B) **Summary Judgment-- Listing Of Undisputed Facts:** Each brief in support of a motion for summary judgment shall include a specifically captioned section listing all material facts as to which the moving party contends there is no genuine issue and citing the parts of the record relied on to support the listed facts as alleged to be undisputed. A brief in response to such a motion shall include a specifically captioned section listing all material facts as to which it is contended that there exists a genuine issue necessary to be litigated and citing the parts of the record relied on to support the facts alleged to be in dispute. In determining a motion for summary judgment, the Court may assume that facts identified by the moving party in its listing of material facts are admitted, unless such a fact is controverted in the statement of genuine issues filed in opposition to the motion.

RULE 62

APPEAL BOND--EXEMPTION FROM

(A) **Exemption:** The Commonwealth of Virginia, or any political subdivision or any office or agent thereof, shall not be required, unless otherwise ordered by the Court, to post a supersedeas bond or other undertaking which includes security for the payment of costs on appeal.

(B) **Alternate to Supersedeas Bond:** In lieu of any supersedeas bond, the parties may stipulate with respect to any agreement or undertaking. In lieu of any cost bond, the parties may stipulate with respect to any agreement or undertaking conditioned that the monies and properties of the Court are fully protected or prepaid. The prevailing party in the district Court should seriously consider this subdivision as, in the event of a reversal, the premium of any bond will be taxed as a part of the costs. All such stipulations must be approved by the Court and filed in the record.

RULE 65

SURETIES--SECURITY--BONDSMAN

(A) **Security:** In both civil actions and criminal cases, except as otherwise provided by law or by agreement of the parties, every bond, undertaking or stipulation must be secured by (1) the deposit of cash or negotiable government bonds, undertaking or stipulation; (2) the undertaking or guaranty of a corporate surety doing business in Virginia and holding a certificate of authority from the Secretary of the Treasury; or (3) the undertaking or guaranty of sufficient solvent sureties, residents of Virginia, who own real or personal property within the State of Virginia worth double the amount of the bond, undertaking or stipulation over all debts and liabilities, and over all obligations assumed on other bonds, undertakings or stipulations, and exclusive of all legal exemptions. A husband and wife may act as surety on a bond, but they shall be considered as only one surety. If a bond, undertaking or stipulation is executed by individual sureties, each surety shall execute an affidavit of justification, giving the full name, occupation, residence and business address, showing that he or she is qualified as an individual surety under the provisions of this Rule. Provided that, in criminal cases, this Rule shall not in any way modify, alter or change any of the provisions of the Bail Reform Act or any successor statute.

(B) **Prohibited Sureties:** Members of the bar, administrative officers or employees of this Court, the United States Marshal, his deputies or assistants, shall not act as a surety in any civil action, criminal case or other proceeding pending in this Court. A member of the bar may execute a bond as attorney-in-fact upon presenting a properly executed power of attorney.

(C) **Powers of Clerk:** To approve security, the Clerk or Deputy Clerk is authorized to approve all recognizances, stipulations, bonds, guaranties, or undertakings, in the penal sum prescribed by statute or order of the Court, whether the security be property or personal or corporate surety. If the bond is offered by a professional bondsman or a person qualifying under (A)(3) above, approval of the Court, Magistrate Judge or Bankruptcy Judge shall be obtained for penal sums in excess of $25,000.00.

(D) **Professional Bondsman:** Any person desiring to become surety for compensation (professional bondsman) on any bond required to be given in any matter before the Court or any of its Magistrate Judges or Bankruptcy Judges, or in any other matter under the jurisdiction of this Court, shall, before attempting to act, obtain approval of the Court. Application for such approval shall be by petition, duly sworn to, setting forth:

(1) That the applicant is of good moral character, is a citizen of the Commonwealth of Virginia, and residing within the boundaries of the Eastern District of Virginia.

(2) His or her full name, business and home address, marital status, and the nature of any business conducted by such person.

(3) Whether he or she is licensed in Virginia and/or any of the cities or counties of Virginia to act as a professional bondsman and, if so, where and whether such person has qualified in any of the Courts of Virginia to so act.

(4) Statement (signed by the owners) of assets (including both real estate and personal estate) and liabilities, and as to real estate, its description, location, how titled and any encumbrances thereon. If a partnership is involved, a statement of the assets of both the partnership and the individual parties must be included, signed by owners of the assets. Assets owned by third parties or jointly with parties who are not partners will not be considered.

(5) A list of any and all bonds on which such person is the surety, the nature of the bond and where lodged.

(6) That such person will quarter-annually file with the Court a list of all bonds upon which he or she is surety, whether any bonds are in default, whether any action on such bond has been instituted, and whether there

are any unpaid judgments against such person.

(7) A certificate from a Court of record, or the Chief of Police of the home city or town, or of two other responsible citizens, that such person is of good moral character.

(8) A list of any and all criminal convictions, except traffic violations, and whether there are any pending indictments or warrants against such person.

(9) If the information provided under paragraph (4) above reveals a total net worth of at least $200,000.00, and the applicant is otherwise satisfactory, an order may be entered permitting the applicant to act until further order of the Court. Should at any time the total net worth stated in paragraph (4) fall below $200,000.00 as shown on any quarterly report, or the applicant have more bonds outstanding than can be adequately covered, in the Court's opinion, by the net worth shown, or the applicant fail to file on time any quarterly report, or if for any reason the Court should deem the security offered by the applicant to be inadequate or outstanding bonds not adequately secured, the Court may terminate the right of the applicant to act as surety on any bond, without notice.

RULE 67

DEPOSITS INTO COURT

Deposit Into Court Procedure: Upon entry of an order in any action involving the payment into Court of a sum of money to be deposited to the credit of the Court for the benefit of any party, the party for whose benefit the sum is to be deposited shall tender to the Court a sketch for an order identifying the desired depository (which must have sufficient collateral in the Federal Reserve Bank in Richmond as required by 31 C.F.R. § 202 [Circular 176]), the specific investment instrument with the rate of interest expected to be earned thereon, and the proposed disposition of the interest proceeds. The order should specify if the Clerk is directed to place the funds into an interest bearing account for the benefit of the party later determined by the Court to be entitled to the fund and interest earned thereon will be provided to the person receiving the funds. If the order does not specify that the funds are to be placed in an interest bearing account for the benefit of the person later determined by the Court to be entitled to the funds, the funds will be deposited into the Court's United States Treasury account, and no interest will accrue to any party's benefit. Interest earned thereon will accrue to the United States. The sketch shall be endorsed by the guardian *ad litem* of any party under a legal disability. Upon entry of such sketch, or any modification thereof, the party shall cause the same to be served on the Clerk in a manner similar to that required by Fed.R.Civ.P.67. The order shall also provide that the Clerk's registry assessment fee, as prescribed by the Judicial Conference of the United States and published in the Federal Register, be paid to the Clerk from the interest earned on the investment. At the time any request for disbursement of deposited funds is made, the party requesting disbursement shall provide the Clerk in writing the social security or tax identification number of any person to whom any payment is to be made.

RULE 71A

LAND CONDEMNATION ACTIONS

The guidelines for filing, docketing, recording and reporting land condemnation proceedings approved by the Judicial Conference of the United States at its March 6-7, 1975 Session are approved for use in this jurisdiction and are hereby adopted. The Clerk is directed to implement these guidelines and is authorized, where the United States files separate condemnation actions and a single declaration of taking relating to those separate actions, to establish a Master file in which the declaration of taking may be filed. The filing of the declaration of taking therein shall constitute a filing of the same in each of the actions to which it relates.

RULE 72

UNITED STATES MAGISTRATE JUDGES--DUTIES

Magistrate judges of this District serve as judicial officers of the Court and are authorized and specially designated to perform all duties authorized or allowed to be performed by United States magistrate judges by the United States Code and any rule governing proceedings in this Court.

Duties and cases may be assigned or referred to a Magistrate Judge by an Order entered in the action or on the instructions of a District Judge.

RULE 79

EXHIBITS AND DEPOSITIONS

(A) **Trial Exhibits:** In all civil actions, unless otherwise ordered by the Court, the party intending to offer exhibits at trial shall place them in a binder, properly tabbed, numbered and indexed, and the original and one copy shall be delivered to the Clerk, with copies in the same form to the opposing party, one (1) business day before the trial.

(B) **Custody and Disposition of Models and Exhibits:**

(1) Custody: After being marked for identification, exhibits offered or admitted in evidence in any action tried in this Court shall be placed in the custody of the Clerk, unless otherwise ordered by the Court. All other exhibits, models, and material not offered and admitted in evidence shall be retained in custody of the attorney or party producing same at trial, unless otherwise directed by the Court.

(2) Removal: Whenever any models, diagrams, exhibits, depositions, transcripts, briefs, tables, charts, paper writings, articles or other items or material or things have been placed in the custody of the Clerk for introduction into evidence or otherwise, and same are not admitted or marked for identification, or otherwise used, they shall be removed by the party who delivered or filed or lodged them with the Clerk immediately following the conclusion of the trial or other disposition of the action, unless otherwise directed by the Court. If such items are not withdrawn within ten days after the right to withdraw them exists, the Clerk may forward them to counsel or the party entitled to them, or destroy or make other disposition of them as the Clerk may deem appropriate.

(C) **Disposition of Exhibits, Depositions, in Civil**

Cases: All exhibits, models, diagrams, depositions, transcripts, briefs, tables, charts, paper writings, articles or other items or material or things, introduced, tendered, lodged or marked in the trial of a civil action or lodged, filed or delivered to the Clerk in anticipation of their introduction into evidence or for use at trial, shall be withdrawn by the parties to the litigation or their counsel upon the expiration of thirty (30) days after the judgment has become final and the time for appeal or application for a rehearing or further hearing shall have passed. If such items, material or things are not so removed within the time aforesaid, the Clerk may forward them to counsel or the party entitled thereto, or shall destroy or make such other disposition or use of them as the Clerk may deem appropriate. The Court may at any time direct or order one or more counsel to be the custodian of the exhibits and depositions rather than the Clerk.

RULE 80

OFFICIAL COURT REPORTERS TRANSCRIPTS-- HEARING ON TRANSCRIPTS--RECORD ON APPEAL

(A) **Preparation of Transcript:** Where a Court reporter, under contract or officially employed, is called upon to prepare a transcript, or any portion thereof, in a civil or criminal case in which a party is acting *pro se,* or in a criminal case in which the defendant is entitled to counsel under the Criminal Justice Act, the Court reporter may, at his or her election, file said transcript or portion thereof with the Clerk of the United States District Court (or if the transcript or portion thereof is ordered by the Court of Appeals, it may be filed with the Clerk of the United States Court of Appeals), and the Clerk shall acknowledge receipt of said transcript and forward same to the *pro se* party or, if represented by counsel pursuant to appointment under the Criminal Justice Act, to the attorney representing said defendant.

(B) **Court Reporter Management Plan:** In accordance with the provisions of 28 U.S.C. § 753 and the requirements of a resolution adopted by the Judicial Conference of the United States at its session in March 1982, all district Courts have been required to file a Court Reporter Management Plan which is available for inspection and copying in the Office of the Clerk. This plan calls for the supervision, duties and assignments of Court reporters, including the work hours, fees for transcripts, etc. The transcript rates charged by reporters are governed by rates recommended by the Judicial Conference of the United States if adopted by this Court. The schedule of maximum fees which may be charged is posted in the Clerk's Office.

(C) **Release of Transcript:** The Clerk shall not release any transcript for copying or reproducing without an order of the Court, but counsel, interested parties, or the news media may examine any transcript on file.

(D) **Obligation to Pay Court Reporter:** The obligation to pay the reporter for any and all transcripts shall be the joint and several personal obligation of the attorney, and the party for whose benefit the transcript was obtained, when the order is placed, to the extent so ordered. Any charges for a transcript shall be payable upon the completion of the transcript or any

segment thereof, when a proper bill for same has been submitted by the reporter. If proper charges for transcripts are not paid within a reasonable time after submission, the reporter may refer the matter to a judge for such action as may be deemed appropriate.

(E) **Record on Appeal:** Unless otherwise directed by the Court, the record on appeal in civil and criminal cases shall not include the examination of the jury on voir dire, counsel's opening statements, arguments of counsel (including arguments of counsel on motions) and the Court's charge to the jury unless there were exceptions to the charge.

Unless the parties file a written stipulation with the Clerk within twenty days after notice of appeal is filed designating the papers which shall constitute the record on appeal the Clerk shall certify and forward to the Court of Appeals all of the original pleadings and orders in the file jacket dealing with the action or proceeding in which the appeal is taken, unless otherwise instructed by the Court of Appeals.

(F) **Daily or Expedited Copy:** All requests for daily or expedited transcripts must be made in writing to the Court Reporter, if known, and, if not, to the Clerk, with copies to opposing counsel, not later than five (5) business days before the hearing or trial to be transcribed.

RULE 83.1

ATTORNEYS AND PRO SE PARTIES

(A) **Eligibility:** Any person who is a member of the bar in good standing in the Supreme Court of Virginia is eligible to practice before this Court upon admission.

(B) **Initial Appearance:** Any person who meets the requirements of the foregoing paragraph and who maintains a law office outside of Virginia shall set forth his or her Virginia State Bar I.D. Number on any initial pleading filed by such person.

(C) **Procedure for Admission:** Every person desiring admission to practice in this Court shall file with the Clerk written application therefor accompanied by an endorsement by two qualified members of the bar of this Court stating that the applicant is of good moral character and professional reputation. The form for such application may be obtained from the Clerk's Office of the Court. As a part of the application, the applicant shall certify that applicant has within ninety (90) days prior to the submission of the application read or reread (a) the Federal Rules of Civil Procedure, (b) the Federal Rules of Criminal Procedure, (c) the Local Rules of Practice, and (d) the Federal Rules of Evidence. The applicant shall thereafter be presented by a qualified practitioner of the Court who shall in open Court by oral motion, and upon giving assurance to the Court that the practitioner has examined the credentials of the applicant and is satisfied the applicant possesses the necessary qualifications, move for the applicant’s admission to practice.

The applicant shall in open Court take the oath required for admission, subscribe the roll of the Court, and pay to the Clerk the required fee. For such payment, the applicant shall be issued a certificate of qualification by the Clerk. For good cause shown, the Court may waive payment of the fee.

(D) **Foreign Attorneys:**

(1) Upon written motion by a member of this Court, a practitioner qualified to practice in the United States District Court of another state or the District of Columbia may appear and conduct specific cases *pro*

hac vice before this Court including oral arguments of motions and trial, provided that:

(a) The rules of the United States District Court of the district in which the practitioner maintains an office extend a similar privilege to members of the bar of this Court; and

(b) That such practitioners from another state or the District of Columbia shall be accompanied by a member of the bar of this Court in all appearances before this Court.

For purposes of this rule, a member of the bar of this Court shall be a person admitted to practice under subparagraph (C), Local Rule 83.1.

(2) All practitioners admitted before this Court for the purpose of participating in a particular proceeding (*pro hac vice*) shall be subject to the Local Rules of the United States District Court for the Eastern District of Virginia including, but not limited to, Appendix B of the Federal Rules of Disciplinary Enforcement. Applicants for *pro hac vice* admission shall complete a written application certifying that they have read the Local Rules of Practice and shall pay the required fee to the Clerk, provided that practitioners employed full time by the United States of America may request exemption from the payment of such fee and the Clerk may grant such exemption. If the Court finds the application otherwise appropriate, upon payment of the required fee or upon the granting of an exemption by the Clerk to full-time employees of the United States of America, the Court may order the *pro hac vice* admission of the applicant. Revenues from *pro hac vice* admission fees shall be deposited in the

district's non-appropriated funds account and disbursed on order of the chief judge of the district for such improvements to the Court's administration of justice as the chief judge finds appropriate.

(3) Except where a party conducts his or her own case, no pleading or notice required to be signed by counsel shall be filed unless signed by counsel who shall have been admitted to practice in this Court under subparagraphs (A),(B) and (C) of this Rule, with the office address where notice can be served upon said attorney, and who shall have such authority that the Court can deal with the attorney alone in all matters connected with the case. Such appearance shall not be withdrawn without leave of the Court. Service of notice or other proceedings on such an attorney shall be equivalent to service on the parties for whom the attorney appeared.

(E) **Western District of Virginia:** Any attorney admitted to practice in the Western District of Virginia shall be permitted to practice in the Eastern District of Virginia upon the filing of a certificate from the Clerk of the Western District of Virginia showing that such attorney has been duly admitted to practice in that district.

(F) **Attorneys Filing Pleadings:** Any counsel presenting papers, suits or pleadings for filing, or making an appearance, must be members of the bar of this Court, or must have counsel who are members of the bar of this Court to join in the pleading by endorsement. Any counsel who joins in a pleading, motion, or other paper filed with the Court will be held accountable for the case by the Court. At least one person admitted to practice under subsection (C) of this Rule must personally be present at all hearings, pretrials, and trials. This obligation may not be avoided or delegated without leave of Court.

(G) **Withdrawal of Appearance:** No attorney who has entered an appearance in any civil or criminal action shall withdraw such appearance, or have it stricken from the record,

except on order of the Court and after reasonable notice to the party on whose behalf said attorney has appeared.

(H) **Practicing Before Admission or While Disbarred or Suspended:** Any person who, before admission to the bar of this Court or during any disbarment or suspension, exercises any of the privileges of a member of the bar of this Court, or who pretends to be entitled so to do, shall be guilty of contempt of court and subject to appropriate punishment therefor.

(I) **Professional Ethics:** With the exception of Virginia Rule of Professional Conduct 3.6 (the subject of which is covered by Local Criminal Rule 57), the ethical standards relating to the practice of law in this Court shall be the Virginia Rules of Professional Conduct, as published in the version effective January 1, 2000.

(J) **Courtroom Decorum:** Counsel shall at all times conduct and demean themselves with dignity and propriety. When addressing the Court, counsel shall rise unless excused therefrom by the Court. All statements and communications to the Court shall be clearly and audibly made from a standing position at the counsel table or, if the Court is equipped with an attorney's lectern, from a standing position behind the lectern, facing the Court or the witness. Counsel shall not approach the bench unless requested to do so by the Court or unless permission is granted upon the request of counsel.

Examination of witnesses shall be conducted by counsel standing behind the lectern or, if none, behind the counsel table. Counsel shall not approach the witness except for the purpose of presenting, inquiring about, or examining the witness with respect to an exhibit, unless otherwise permitted by the Court. Only one attorney for each party may participate in the examination or cross-examination of a witness.

(K) **Third-Year Law Student:** An eligible law student qualifying pursuant to Paragraph II of the Plan for Third-Year Practice filed in each division of this Court is herewith given leave to participate in any civil or criminal case pursuant to said plan and as said plan may, from time to time, be amended. The Plan for Third-Year Practice is Appendix A to these Rules.

(L) **Federal Rules of Disciplinary Enforcement:** All counsel admitted to practice before this Court or admitted for the purpose of

a particular proceeding (*pro hac vice*) shall be admitted subject to the rules, conditions and provisions set forth in full as Appendix B to these Rules.

RULE 83.2

SALES AND DISTRIBUTION OF PROCEEDS OF SALES

(A) **General:** All sales shall be made by the United States Marshal, or an authorized Deputy United States Marshal in the name of the Marshal, and the provisions of Local Admiralty Rule (e)(15) subparagraphs (b); (c); (d) and (e) shall apply except as may be modified in this Rule.

(B) **Confirmation by Court:** All sales shall be subject to confirmation by the Court. The Marshal shall file with the Clerk on the day of sale a report thereof. An interested person may object to the sale by filing written objections with the Clerk within two (2) Court days following the sale in conformity with Local Admiralty Rule (e)(15)(c). If no objections are filed, the sale shall stand confirmed unless the Court orders otherwise within said time. If objections are filed within the said two days, the Clerk shall forthwith submit the report and objections to the Court for prompt disposition.

(C) **Marshal's Discretion in Certain Instances:** The Marshal may decline to knock down a vessel or other property to the highest bidder when the highest bid, in his or her opinion, is grossly inadequate.

(D) **Deposit of Sale Proceeds:** The proceeds of all sales by the Marshal shall be forthwith paid into the registry of the Court to be disposed of according to law.

(E) **Distributions:** All distributions of the proceeds of any sale shall be by order of Court.

(F) **Certain Maritime Liens:** Maritime liens filed before sale, including liens filed by leave of Court at anytime prior to sale, shall be paid first. Maritime liens filed after sale shall be paid last. Liens in each of the foregoing two classes shall preserve their respective rank as among themselves, except in the case of maritime liens of the first class, the order of priority between such liens shall be that those which have accrued within one year prior to the filing of the complaint shall be paid first, and claims which have accrued theretofore shall be paid in the inverse order of the years in which they accrued.

RULE 83.3

PHOTOGRAPHING, BROADCASTING AND TELEVISING IN COURTROOM AND ENVIRONS

(A) **General:** The taking of photographs and operation of tape recorders in the Courtroom or its environs, and radio or television broadcasting from the Courtroom or its environs during the progress of or in connection with judicial proceedings, including proceedings before a United States Magistrate Judge or Bankruptcy Judge, whether or not Court is actually in session, is prohibited. A judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record; and (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings. Environs, as used in this Rule, shall include any floor on which any Courtroom or hearing room is located, including all hallways, stairways, windows, and elevators immediately adjacent to any such floor.

(B) **Exception:** With permission of the party or parties to be photographed, pictures may be taken by any permanent occupant of any office within the environs aforesaid when the Court is not in session.

RULE 83.4

HABEAS CORPUS AND PROCEEDINGS IN FORMA PAUPERIS

(A) **Standard Forms:** All *pro se* petitions for writs of habeas corpora must be filed on a set of standardized forms to be supplied, upon request, by the Clerk without cost to the petitioner. Counsel filing a petition for writ of habeas corpus need not use a standardized form, but any petition shall contain essentially the same information as set forth on said form.

(B) **Filing of Cases by Prisoners *In Forma Pauperis*:** If a party desires to file a proceeding *in forma pauperis* under 28 U.S.C. § 1915(a), and if the party desiring to file such proceeding is then confined to a state or federal penal institution, the party shall, within thirty (30) days of the receipt of any order, accomplish one of the following:

(1) Remit the required filing fee to the Clerk of this Court, or

(2) Request an extension of time within which to pay the required fee and thereafter pay same, or

(3) Cause to be filed a statement of the prison account of the party showing (a) the amount on deposit in the prison account at the period beginning six months immediately preceding the submission of the complaint or petition herein, and (b) the deposits to that prison account within the six-month period, including the source of said funds so deposited in said account and the reasons for any withdrawal therefrom, and

(C) **Effect of Permitting Partial Payment; Reconsid-eration of Status:** Permission to proceed *in forma pauperis* by making a partial payment shall not be construed as authorizing the order of successive later payments after the order has been entered authorizing the party to proceed *in forma pauperis.* Whenever it appears that there may have been a change in the party's financial condition, the Court may reconsider whether the party may continue to proceed *in forma pauperis*.

(D) **Site of Evidentiary Hearings--Prisoner Cases:** In its

discretion, the Court may conduct evidentiary hearings in prisoner cases at any penal institution in Virginia.

RULE 83.5

COMMUNICATION WITH JURORS

No attorney or party litigant shall personally, or through any investigator or any other person acting for the attorney or party litigant, interview, examine or question any juror or alternate juror with respect to the verdict or deliberations of the jury in any action, civil or criminal, except on leave of court granted upon good cause shown and upon such conditions as the court shall fix.

RULE 83.6

SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

(A) The Court encourages the parties to meet and consult with each other to achieve settlement. Pursuant to 28 U.S.C. §§ 651, 652, and 653, as amended by the Alternative Dispute Resolution Act of 1998, the use of mediation as an alternative dispute resolution process in all civil actions, including adversary proceedings in bankruptcy, is authorized. Before the initial pretrial conference or in the scheduling order, litigants in all civil cases shall be advised of the availability of mediation and may request it. The continued utilization of settlement conferences as a form of mediation is also authorized.

(B) The parties by consent may select and compensate any mutually acceptable non-judicial mediator or neutral. No mediator or neutral may be compensated by contingent fee. After mediation ends, the parties and the mediator or neutral shall file under seal a report stating (1) the name and address of the mediator or neutral; (2) his or her compensation and who paid it; and (3) the result of the mediation.

(C) All Active United States District Judges, Senior United States District Judges, United States Magistrate Judges and United States Bankruptcy Judges are authorized (a) to act as mediators or neutrals; and (b) to appoint as mediators or neutrals any appropriately trained non-judicial person, in which event the appointing Order shall establish the compensation to be paid for the services of such non-judicial person and shall schedule a time for completion of mediation. Any participant or potential participant in ADR who is able to establish an inability to pay a pro rata share of the neutral's proposed compensation, may petition this court for the appointment of a judicial neutral.

(D) The appointment of a mediator or neutral shall not operate to postpone or stay the scheduling of any case or controversy nor shall such appointment be grounds for the continuance of a previously scheduled trial date or the extension of any deadlines previously scheduled by the Court.

(E) The substance of communication in the mediation process shall not be disclosed to any person other than participants in the mediation process; provided, however, that nothing herein shall modify the application of Federal Rule of Evidence 408 nor shall use in the mediation process of an otherwise admissible document, object or statement preclude its use at trial.

(F) The Chief Judge of the District shall appoint an ADR Administrator for the District. Duties of the Administrator shall include the following: implementing, administering, overseeing and evaluating the Court's ADR programs; providing rules for the qualification of mediators and neutrals; and consulting with the Chief Judge of the District, members of the bar, and the United States Attorney relative to exempting specific cases or categories of cases from ADR.

(G) Disqualification of neutrals: Neutrals shall be disqualified from participation in any case in which the individual, his or her law firm, group, or organization may be personally affected by the outcome of the mediation or their impartiality may be called into question. Accordingly, the provisions of 28 U.S.C.§ 455 apply to neutrals by application of this Local Rule. Neutrals shall also refrain from activity that may call into question their impartiality, for example, acceptance of gifts or favors of any kind from a party.

LOCAL CRIMINAL RULES

LOCAL CRIMINAL RULE 6

GRAND JURY

(A) **Charge to Grand Jury:** When a new grand jury is first convened, the Court shall deliver its charge but, if recessed and later reconvened, the Court shall not be required again to charge the grand jury, but may do so if deemed appropriate.

(B) Unless otherwise ordered by the Court, grand jurors selected for service shall be convened at the following locations:

(1) At Alexandria - on the first Tuesday in each month except July.

(2) At Norfolk - on the second Monday in each month.

(3) At Richmond - on the third Monday in each month except August.

(4) At Newport News - as ordered.

Whenever a Monday falls upon a legal holiday, the grand jury may be directed to convene on the next succeeding business day which is not a legal holiday, without the necessity of an order of Court. Grand jurors for each respective division of the Court shall be selected in accordance with the Jury Selection Act and the district plan implementing same.

LOCAL CRIMINAL RULE 12

CRIMINAL CASES--MOTIONS

(A) **General:** Within eleven (11) days from the date of arraignment, or such other time as may be fixed by the Court, the parties shall file all desired motions (1) challenging the sufficiency of the indictment, information, warrant or violation notice, (2) raising any issues of venue or jurisdiction, (3) for discovery or production, (4) to suppress evidence, (5) for any mental examination, (6) objections to use by the opposing party of any particular evidence known by a party which may be subject to pretrial ruling, and (7) any other matter capable of being raised by a pretrial motion. A response to any motion shall be filed within eleven (11) days after the filing of the motion or such other time as may be fixed by the Court.

(B) **Style of Motions:** All motions and the responses in criminal cases shall bear a caption which identifies the moving party and describes the general nature and the purpose of the motion. A defendant may adopt a motion filed by another defendant only by filing a separate pleading for each motion that the defendant wishes to adopt. This separate pleading must bear the same caption as the original pleading that the defendant wishes to adopt. A single motion to adopt more than one pleading of another defendant is not permitted.

LOCAL CRIMINAL RULE 24

TRIAL JURORS

See Local Rules 51 and 83.5.

LOCAL CRIMINAL RULE 30

INSTRUCTIONS

See Local Rule 51.

LOCAL CRIMINAL RULE 55

DISPOSITION OF EXHIBITS IN CRIMINAL CASES

All exhibits, models or diagrams, documentary or physical, introduced in the trial of a criminal case or otherwise lodged in anticipation of their introduction into evidence in the trial of a criminal case, shall be retained by the Clerk to be disposed of at the time and in the manner directed by order of the Court; provided, however, that upon the expiration of forty-five (45) days after the judgment shall have become final and the time for appeal or application for a rehearing or further hearing shall have passed and no party shall have applied for a return of any exhibits submitted by or belonging to any such applicant, the Clerk may, unless otherwise directed by the Court, deliver to the United States Attorney any exhibit or other physical evidence submitted by any party, for use by any Government Agency interested therein, or for destruction or confiscation.

LOCAL CRIMINAL RULE 57

FREE PRESS--FAIR TRIAL DIRECTIVES

(A) **Potential or Imminent Criminal Litigation:** In connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, it is the duty of that lawyer or firm not to release or authorize the release of information or opinion (1) if a reasonable person would expect such information or opinion to be further disseminated by any means of public communication, and (2) if there is a reasonable likelihood that such dissemination would interfere with a fair trial or otherwise prejudice the due administration of justice.

(B) **Grand Jury Proceedings:** With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated, by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(C) **Pending Criminal Proceedings - Specific Topics:** From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the termination of trial or disposition without trial, a lawyer or a law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be further disseminated by any means of public communication, if such statement concerns:

(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his or her apprehension or to warn the public of any dangers such person may present;

(2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense;

(6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of the official or professional obligations imposed, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against such person.

(D) **Pending Criminal Proceedings - General:** During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by means of public communication, if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote from or refer without comment to public records

of the Court in the case.

(E) **Provisos:** Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against such lawyer.

(F) **Court Personnel:** All Court personnel, including, among others, Marshals, deputy Marshals, Court Clerks, bailiffs, Court reporters, and employees or subcontractors retained by the Court--appointed official reporters, are prohibited from disclosing to any person without authorization by the Court, information relating to a pending grand jury proceeding, or criminal case that is not part of the public records of the Court. The divulgence of information concerning grand jury proceedings, in camera arguments, and hearings held in chambers or otherwise outside the presence of the public is likewise forbidden.

(G) **Motions:** In a widely publicized or sensational criminal case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the Courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

(H) **Open Court:** Unless otherwise provided by law, all preliminary criminal proceedings, including preliminary examinations and hearings on pretrial motions, shall be held in open Court and shall be available for attendance and observation by the public; provided that, upon motion made or agreed to by the defense, the Court, in the exercise of its discretion, may order a pretrial proceeding be closed to the public, in whole or in part, on the grounds:

(1) that there is a substantial probability that the dissemination of information disclosed at such proceeding would impair the defendant's right to a fair trial; and

(2) that reasonable alternatives to closure will not adequately protect defendant's right to a fair trial.

If the Court so orders, it shall state for the record its specific findings concerning the need for closure.

LOCAL CRIMINAL RULE 58

In accordance with Fed. R. Crim. P. 58(d)(1), payment of a fixed sum may be accepted in suitable types of misdemeanor cases in lieu of appearance and as authorizing the termination of the proceedings. Such fixed sums may be increased or decreased from time to time by the Court, provided such fixed sums shall not exceed the maximum fine which could be imposed upon conviction.

LOCAL ADMIRALTY RULES

LOCAL ADMIRALTY RULE (a)

Authority and Scope

LAR (a)(1) Authority. The Local Admiralty Rules of the United States District Court for the Eastern District of Virginia are promulgated by a majority of the judges as authorized by and subject to the limitations of Fed. R. Civ. P. 83. Any reference to Federal Rule or Federal Rules shall be to the Federal Rules of Civil Procedure.

LAR (a)(2) Scope. The Local Admiralty Rules apply only to civil actions that are governed by Supplemental Rule A of the Supplemental Rules for Certain Admiralty and Maritime Claims. All other local rules are applicable in these cases, but to the extent that another local rule is inconsistent with the applicable Local Admiralty Rules, the Local Admiralty Rules shall govern in admiralty cases.

LAR (a)(3) Citation. The Local Admiralty Rules may be cited by the letters "LAR" and the lower case letters and numbers in parentheses that appear at the beginning of each section. The lower case letter is intended to associate the Local Admiralty Rule with the Supplemental Rule that bears the same capital letter.

LAR (a)(4) Officers of Court. As used in the Local Admiralty Rules, "judicial officer" means a United States District Judge or a United States Magistrate Judge; "Clerk" or "Clerk of Court" means the Clerk of the District Court and includes deputy Clerks of Court; and "Marshal" means the United States Marshal and includes deputy Marshals.

LOCAL ADMIRALTY RULE (b)

In Personam Actions: Attachment and Garnishment

LAR (b)(1) "Not Found Within the District" Defined. A defendant is considered to be "not found within the district" if, in an action *in personam,* service upon the defendant cannot be effected in person or upon an authorized officer or agent within the Commonwealth or if the only effective service is through the Clerk of the State Corporation Commission, the Secretary of the Commonwealth, or under the Virginia Long Arm Statute.

LAR (b)(2) Affidavit That Defendant is Not Found Within the District. The affidavit required by Supplemental Rule (B)(2) to accompany the complaint shall list every effort made by and on behalf of plaintiff to find and serve the defendant within the district.

LAR (b)(3) Ownership of Property. In an action where the debts, credits, or effects named in the process of maritime attachment or garnishment are not delivered up to the process server by the defendant or the garnishee, or are asserted by the possessor not to be the property of the defendant, the process shall be served sufficiently by leaving a copy of the process with the defendant, garnishee and possessor, at his or her residence or usual place of business. When the return of service shows that process was so served, and when the plaintiff shows to the satisfaction of the Court that the property does belong to the defendant or the garnishee, the Court may proceed to hear and decide the case.

LAR (b)(4) Use of State Procedures. When the plaintiff invokes a state procedure in order to attach or garnish property under Fed. R. Civ. P. (4)(n)(2), the process of attachment or garnishment shall so state.

LOCAL ADMIRALTY RULE (c)

Actions *In Rem:* **Special Provisions**

LAR (c)(1) Undertaking in Lieu of Arrest. If, before or after commencement of an action by arrest, all parties accept a written undertaking to respond on behalf of the vessel or other property in return for foregoing the arrest, or stipulating to the release of the vessel or other property, the undertaking shall be filed, shall become the party in place of the vessel or other property, and shall be deemed the subject referred to when a pleading, motion, order, or judgment in the action refers to the vessel or property.

LAR (c)(2) Intangible Property. The summons issued pursuant to Supplemental Rule C(3) shall direct the person having control of the specified funds or other intangible property to show cause no later than 10 days after service why the funds or other property should not be delivered to the Marshal to abide the judgment. A judicial officer for good cause shown may lengthen or shorten the time. Service of the summons has the effect of an arrest of the property and brings it within the control of the Court. The person who is served may deliver or pay over to the Marshal (or other person or organization having a warrant for the arrest of the property) the property or funds proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. A claimant of the property may show cause why the property should not be delivered or should be returned by serving and filing a claim as provided in Supplemental Rule C(6) within the time allowed to show cause and by serving and filing an answer to the complaint within 20 days thereafter. If a claim is not filed within the time stated in the summons, or an answer is not filed within the time allowed under this rule, the person who was served shall deliver or pay to the Marshal the property or funds proceeded against, or a part thereof sufficient to satisfy plaintiff's claim.

LAR (c)(3) Publication of Notice of Action and Arrest. The notice required by Supplemental Rule C(4) shall be published once in a newspaper of general circulation within the Division where arrest is to occur , and plaintiff's attorney shall file a copy of the notice as it was published with the

Clerk. The notice shall contain:

(a) the Court, title, and number of the action;

(b) the date of the arrest;

(c) the identity of the property arrested;

(d) the name, address and telephone number of the attorney for plaintiff;

(1) (i) a statement that a person who asserts an interest in or right against the property that is the subject of the civil forfeiture must file a verified statement identifying the interest or right, in compliance with Admiralty Rule C(6)(a), within 20 days of the earlier of (1) receiving actual notice of execution of process, or (2) publication of the notice; or

(ii) a statement that a person who asserts a right of possession or any ownership interest in the property that is the subject of the Maritime Arrest or Other Proceeding must file a verified statement of right or interest, in compliance with Admiralty Rule C(6)(b), within 10 days of the earlier of (1) execution of process, or (2) publication of the notice.

(2) a statement that a person who files a statement of interest in or right against the property subject to the civil forfeiture or a person who asserts a right of possession or any ownership interest in the property subject to Maritime Arrest and Other Proceedings must file an answer within 20 days of filing the verified statement under LAR (c)(3)(e)(i) or (ii).

(g) a statement that applications for intervention under Federal Rule 24 by persons claiming maritime liens or other interests shall be filed within the 10 days allowed for claims for possession; and

(h) the name, address and telephone number of the

Marshal or deputy Marshal.

LAR (c)(4) Default in Action *In Rem*.

(a) Notice Required. A party seeking a default judgment in an action *in rem* must satisfy the judicial officer that due notice of the action and arrest of the property has been given (1) by publication in a newspaper of general circulation within the Division where arrest occurred, (2) by service under Fed. R. Civ. P. 5(a) upon the master or other person having custody of the property, and (3) by service under Fed. R. Civ. P. 5(b) upon every other person who has not appeared in the action and is known to have an interest in the property.

(b) Persons With Recorded Interests.

(1) If the defendant property is a vessel documented under the laws of the United States, plaintiff must obtain a current Certificate of Ownership or General Index or Abstract of Title from the United States Coast Guard and give notice to the persons named therein claiming a current interest in or lien against the defendant vessel.

(2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, plaintiff must obtain information from the issuing authority and give notice to the persons named in the records of such authority.

(3) If the defendant property is of such character that there exists a registry of recorded property interests and/or security interests in the property (whether governmental or private), the party must obtain information from each such registry and give notice to the persons named in the records of each such registry.

LAR (c)(5) Entry of Default and Default Judgment. After the

time for filing an answer has expired, the plaintiff may move for entry of default under Fed. R. Civ. P. 55(a), unless there be an understanding between the parties or counsel to the contrary. Default will be entered upon showing that:

(a) notice has been given as required in LAR (c)(4);

(b) the time for answer has expired; and

(c) no one has filed an appearance to claim the property.

The plaintiff may move for the entry of default judgment under Fed. R. Civ. P. 55(b)(2) at any time after default has been entered. Default judgment may be entered under Fed. R. Civ. P. 55(b)(1) in admiralty proceedings only after the Clerk shall have consulted with the Court.

THERE IS NO LOCAL ADMIRALTY RULE (d)

Possessory, Petitory and Partition Actions

LOCAL ADMIRALTY RULE (e)

Actions *In Rem* and Quasi *In Rem:* General Provisions

LAR (e)(1) Itemized Demand for Judgment. The demand for judgment in every complaint filed under Supplemental Rule B or C shall allege the dollar amount of the debt or damages for which the action was commenced; and the demand for judgment shall also allege the dollar amount of every claim for interest, costs, attorneys' fees, and other items of damage. The amount of the special bond posted under Supplemental Rule E(5) may be based upon these allegations.

LAR (e)(2) Salvage Actions Complaints. In an action for a salvage reward, the complaint shall allege the dollar value of the vessel, cargo, freight, and other property salved, and the dollar amount of the reward claimed.

LAR (e)(3) Verification of Pleadings. Every complaint in Supplemental Rule B, C and D actions shall be verified on oath or solemn affirmation by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is available, verification of a complaint may be made by an agent, attorney-in-fact, or attorney of record, who shall state the sources of the knowledge, information, and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized corporate officer; and state that the affiant is authorized so to verify. Such a verification will be deemed to have been made by the party to whom a document might apply as if verified personally. Any interested party may move the Court, with or without requesting a stay, for the personal oath of a party or of all parties, or the oath of an authorized corporate officer. If required by the Court, such verification shall be procured by commission or as otherwise ordered.

LAR (e)(4) Review by Judicial Officer. Unless otherwise required by a judicial officer, the review of complaints and papers called for by Supplemental Rules B(1) and C(3) does not require the affiant party or attorney to be present. The applicant for review shall include a form of order from the Clerk to the Marshal or other person or organization which, upon signature by the judicial officer, will set in motion

the arrest, attachment or garnishment sought by the applicant.

LAR (e)(5)(A) Service of Warrants and Process of Attachment. Warrants for the arrest of a vessel, or cargo aboard a vessel, and process to attach a vessel or property aboard a vessel, shall be served only by the Marshal. If other property, tangible or intangible is the subject of the action, the warrant shall be delivered by the Clerk to a person or organization authorized to enforce it, who may be a Marshal, a person or organization contracted with by the United States, a person specially appointed by the Court for that purpose, or, if the action is brought by the United States, any officer or employee of the United States.

(B) If the tangible property to be attached or arrested is a vessel, the Marshal shall affix a copy of the process on the forward bulkhead of the wheelhouse, and at the head of one accommodation where it is visible to people embarking or disembarking the vessel at the ladder. In addition, if the vessel is moored at a shoreside facility, the Marshal shall notify the owner or manager of the facility of the fact of the arrest or attachment.

LAR (e)(6) Marshal's Forms. The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal or other process server on forms supplied by the Marshal and available from the Marshal's Office.

LAR (e)(7) Property in Possession of United States Officer. When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present, and otherwise to the custodian of the property. The Marshal will instruct the officer or employee or custodian to retain custody of the property until ordered to do otherwise by the Court.

LAR (e)(8) Security for Costs. In an action under Supplemental Rule E, a party may file and serve upon an adverse party a notice to post security for costs. Unless otherwise ordered by the Court, the amount of security shall be $500.00. The party notified shall post security within five days after service. A party who fails to post security when due may not participate further in the proceedings, except for the purpose of seeking relief from the order.

LAR (e)(9) Increased Security for Costs. A party may apply to the Court for an order increasing the amount of security for costs. The Marshal shall notify the Court if a party fails to advance sums as requested, after property has been arrested, attached or garnished, and the Marshal may apply to the Court for directions if a question arises concerning the obligation of a party to advance moneys required under this rule.

LAR(e)(10) Marshal's Fees and Expenses. The party who first seeks arrest or attachment of property in an action under Supplemental Rule E or Fed. R. Civ. P. 4(n) shall deposit a sum of money with the Marshal to cover fees, expenses of arrest, and safekeeping charges for ten days. The Marshal is not required to execute process until the deposit is made. The sum of $5,000.00 shall suffice in any case, subject to increase or to reduction following execution, and the party shall advance additional sums from time to time as requested to cover the Marshal's estimated fees and expenses until the property is released or disposed of as provided in Supplemental Rule E.

LAR (e)(11) Appraisal. An order for appraisal of property so that security may be given or altered will be entered by the Clerk at the request of any interested party. If the parties do not agree in writing upon an appraiser, a judicial officer will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one day's notice of the time and place of making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the Clerk and serve it upon counsel of record. The appraiser's fee normally will be paid by the moving party, but it is a taxable cost of the action.

LAR (e)(12) Adversary Hearing. The adversary hearing following arrest or attachment and garnishment that is called

for in Supplemental Rule E(4)(f) shall be conducted by a judicial officer.

LAR (e)(13) Intervenors' Claims.

(a) When a vessel or other property has been arrested, attached, or garnished and is in the hands of the Marshal or custodian substituted therefore, anyone having a claim against the vessel or property is required to present the claim by filing an intervening complaint, and not by filing an original complaint, unless otherwise ordered by a judicial officer. Upon the filing of an intervening complaint, the Clerk shall forthwith deliver a conformed copy to the Marshal, who shall deliver the copy to the vessel or custodian of the property, but the Marshal need not re-arrest or re-attach the vessel or property. Intervenors shall thereafter be subject to the rights and obligations of parties.

(b) No party may intervene without first obtaining leave of Court if intervention is sought within 15 days prior to the date for which a sale of the vessel or property has been set by the Court.

(c) An intervenor shall share the deposit for Marshal's fees and expenses in the proportion that its claim bears to the sum of all the claims.

LAR (e)(14) Custody of Property.

(a) Safekeeping of Property. When a vessel or other property is brought into the Marshal's custody by arrest or attachment, the Marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel, or the appointment of a facility or person as custodian of the property in place of the Marshal.

(b) Cargo Handling, Repairs, and Movement of the Vessel. Following arrest or attachment of a vessel, no cargo handling, repairs, or movement may be made without an order of Court. The applicant for such an order shall give notice to the Marshal and to all parties of record. Upon

proof of adequate insurance coverage of the applicant to indemnify the Marshal for his liability, the Court may direct the Marshal to permit cargo handling, repairs, movement of the vessel, or other operations.

(c) Motion for Change in Arrangements. Before or after the Marshal has taken custody of a vessel, cargo, or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the Marshal and to all parties of record. The judicial officer will require that adequate insurance on the property will be maintained by the successor to the Marshal, before issuing the order to change arrangements.

(d) Insurance. The Marshal may order insurance to protect the Marshal, his deputies, keepers, and substitute custodians, from liabilities assumed in arresting and holding the vessel, cargo, or other property, and in performing whatever services may be undertaken to protect the vessel, cargo, or other property, and to maintain the Court's custody. The party who applies for arrest or attachment of the vessel, cargo, or other property shall reimburse the Marshal for premiums paid for the insurance. The party who applies for removal of the vessel, cargo, or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the Marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo, or other property is in custody of the Court.

(e) Claims by Suppliers for Payment of Charges. A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the Court who has not been paid and claims the right to payment as an expense of administration shall submit an invoice to the Court for approval in the

form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the Marshal, substitute custodian (if one has been appointed), and all parties of record. The Court may consider the claims individually or schedule a single hearing for all claims.

LAR (e)(15) Sale of Property Not Subject to Admiralty Rule E (9)(b) Interlocutory Sales.

(a) Notice. Unless otherwise ordered upon good cause shown or as provided by law, a notice of sale of property in an action *in rem*, including the terms of sale, shall be published daily for a period of six days prior to the day of sale in a newspaper of general circulation in the Division where arrest occurred and sale is to take place.

(b) Sale and Report. All sales shall be made by the United States Marshal or his authorized deputy Marshal in the name of the Marshal or by other person or organization authorized to execute the warrant or by any other person assigned by the Court. All sales are subject to confirmation by the Court. The Marshal may, without leave of Court, decline to knock down a vessel or other property to the highest bidder when the highest bid is, in his or her opinion, grossly inadequate. On the day of the sale, the Marshal shall file his report with the Clerk giving all pertinent information, including the fact of the sale, the date, the price obtained and how paid or to be paid, and the name and address of the successful bidder.

(c) Objection to Sale. An interested person may object to the sale by filing a written objection with the Clerk within two Court days following the sale, serving the objection on all parties of record, the successful bidder, and the Marshal. The Marshal is authorized to demand and receive from the objecting party a sum sufficient to pay the expense of keeping the property for at least seven days. The written objection must be endorsed by the Marshal prior to filing with the Clerk, as evidence of the acknowledgment of

receipt of the deposit of the required expense funds.

(d) Confirmation of the Sale Without Motion. A sale shall stand confirmed as of course without any action by the Court unless (1) written objection is filed with the Court within the time allowed under these rules, or (2) the purchaser is in default for failure to pay the balance due to the Marshal. The purchaser in a sale so confirmed as of course shall present a form of order reflecting the confirmation of the sale for entry by the Clerk on the fourth Court day following the sale or after the balance of sale funds have been paid, whichever last occurs. The Marshal shall transfer title to the purchaser upon presentation of such order signed by the Clerk.

(e) Confirmation of the Sale Upon Motion. If an objection has been filed or if the successful bidder is in default, the Marshal, the objector, the successful bidder, or a party, may move the Court for relief. The motion will be heard summarily by a judicial officer. The person seeking the hearing on such a motion shall apply to the Court for an order fixing the date and time of the hearing and directing the manner of giving notice and shall give written notice of the motion to the Marshal, all parties, the successful bidder, and the objector. The Court may confirm the sale, order a new sale, or grant such other relief as justice requires. Notice of any hearing on such motion may be informal and, if approved by the Court, by telephone. The parties are expected to be prepared to go forward with any hearing so ordered.

(f) Disposition of Deposits.

(1) Objection Sustained. If an objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any

balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

(2) Objection Overruled. If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

LOCAL ADMIRALTY RULE (f)

Limitation of Liability

LAR (f)(1) Security for Costs. The amount of security for costs under Supplemental Rule F(1) shall be $1,000.00, and it may be combined with the security for value and interest, unless otherwise ordered.

LAR (f)(2) Order of Proof at Trial. Where the vessel interests seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint, the plaintiff in the former or the damage claimant in the latter, shall proceed with its proof first, as is normal at civil trials.

LAR (f)(3) Compliance With Supplemental Rule F(4). The owner shall file within seven (7) days after the date named in the notice proof of compliance with the notice requirement of Supplemental Rule F(4).

APPENDIX A

PLAN FOR THIRD YEAR PRACTICE RULE

I. Activities

A. An eligible law student may appear before the judges, magistrate judges, and bankruptcy judges in this Court on behalf of any person if the person on whose behalf he or she is appearing has indicated in writing consent to that appearance and the supervising lawyer, who must be counsel of record for the person on whose behalf the law student is appearing, has also indicated in writing approval of that appearance, in the following matters:

1. Any civil or criminal matter.

2. Any bankruptcy matter.

B. Any eligible law student may appear in any criminal or civil matter on behalf of the Government with the written approval of the United States Attorney or his authorized representative as the supervising lawyer.

C. In all matters before the judges, magistrate judges or bankruptcy judges, the supervising lawyer must be personally present unless permission to the contra is granted by the Court.

II. Requirements and Limitations

In order to make an appearance pursuant to this rule, the law student must:

A. Be duly enrolled in a law school approved by the American Bar Association or Virginia Board of Bar Examiners.

B. Have completed legal studies amounting to at least four (4) semesters, or the equivalent if the school is on some basis other than a semester basis.

C. Be certified by the dean of his law school as

being of good character and competent legal ability, and as being adequately trained to perform as a legal intern.

D. Be introduced to the Court in which he or she is appearing by an attorney admitted to practice in same.

E. Neither ask for nor receive any compensation or remuneration of any kind for services from the person on whose behalf he or she renders services, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the State, or federal government, from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.

F. Certify in writing that he or she has read and is familiar with the Virginia Code of Professional Responsibility.

III. Certification

The certification of a student by the law school dean:

A. Shall be filed with the Clerk of this Court and, unless it is sooner withdrawn, it shall remain in effect until the expiration of eighteen (18) months after it is filed, or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. For any student who passes that examination or who is admitted to the bar without taking an examination, the certification shall continue in effect until the date he or she is admitted to the bar.

B. May be withdrawn by the dean at any time by mailing a notice to that effect to the Clerk of this Court. It is not necessary that the notice state the cause for withdrawal.

C. May be terminated by this Court at any time without notice or hearing and without any showing of cause.

IV. Other Activities

A. In addition, an eligible law student may engage in other activities, under the general supervision of a member of the bar of this Court, but outside the personal presence of that lawyer, including:

1. Preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer.

2. Preparation of briefs, abstracts and other documents to be filed, but such documents must be signed by the supervising lawyer.

3. Except when the assignment of counsel in the matter is required by any constitutional provision, statute or rule of this Court, assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for post-conviction relief. If there is an attorney of record in the matter, all such assistance must be supervised by the attorney of record, and all documents submitted to the Court on behalf of such a client must be signed by the attorney of record.

4. Each document or pleading must contain the name of the eligible law student who has participated in drafting it. If he participated in drafting only a portion of it, that fact may be mentioned.

B. Nothing contained herein shall be construed to permit the law student to participate in the taking of depositions in the absence of his supervising attorney.

V. Supervision

The member of the bar under whose supervision an

eligible law student does any of the things permitted by this rule shall:

A. Be a lawyer whose service as a supervising lawyer for this program is approved by a judge of this Court. Such approval may be given upon application of any attorney who is a member of the bar of the Court. Such approval may be given by a judge of this Court by formally or informally advising the Clerk of such approval. No approval shall be granted, however, unless and until approval by the dean of the law school in which the law student is enrolled is also obtained.

B. Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.

C. Assist the student in his or her preparation to the extent the supervising lawyer considers it necessary.

D. Agree to notify the dean of the appropriate law school of any alleged failure on the part of the student to abide by the letter and spirit of this order.

E. The Clerk of the Court shall maintain a roll of approved law students and supervising attorneys.

VI. Miscellaneous

Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything he or she might lawfully do prior to the adoption of this Rule.

APPENDIX B

FEDERAL RULES OF DISCIPLINARY ENFORCEMENT

FRDE **RULE I**

Attorneys Convicted of Crimes

A. Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any Court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

B. The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of any other to commit a "serious crime."

C. A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

D. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime,

the Court shall, in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the Court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded. This Rule shall not be applicable if the attorney has surrendered his license to practice law and has submitted a letter to the Clerk withdrawing his or her name from the Roll of Attorneys.

E. Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the Court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the Court; provided, however, that the Court may in its discretion make no references with respect to convictions for minor offenses.

F. An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

FRDE **RULE II**

Discipline Imposed By Other Courts

A. Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a Court of any state, territory, commonwealth or possession of

the United States, promptly inform the Clerk of this Court of such action.

B. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another Court, this Court shall forthwith issue a notice directed to the attorney containing:

1. A copy of the judgment or order from the other Court; and

2. An order to show cause directing that the attorney inform this Court within 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in (D) hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

C. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

D. Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (B) above, this Court shall impose the identical discipline unless the respondent-attorney demonstrates, or this Court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

1. That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

2. That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or

3. That the imposition of the same discipline

by this Court would result in grave injustice; or

4. That the misconduct established is deemed by this Court to warrant substantially different discipline.

Where this Court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

E. In all other respects, a final adjudication in another Court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in the Court of the United States.

F. This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

FRDE **RULE III**

Disbarment on Consent or Resignation in Other Courts

A. Any attorney admitted to practice before this Court who shall be disbarred on consent or resign from the bar of any other Court of the United States or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court.

B. Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning from the bar of any other Court of the United States or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an in-

vestigation into allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

FRDE **RULE IV**

Standards for Professional Conduct

A. For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, reprimanded or subjected to other disciplinary action as the circumstances may warrant.

B. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Virginia Rules of Professional Conduct adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of any attorney-client relationship. The Rules of Professional Conduct adopted by this Court are the Rules of Professional Conduct adopted by the highest Court of the state in which this Court sits, as amended from time to time by that state Court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state.

FRDE **RULE V**

Disciplinary Proceedings

A. When misconduct or allegations of misconduct which, as substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a judge of this Court, whether by complaint or otherwise, and the applicable procedure is not

otherwise mandated by these Rules, the judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

B. Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney, the disposition of which in the judgment of the counsel should be awaited before further action by this Court is considered, or for any other valid reason, counsel shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons therefor.

C. To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court upon a showing of probable cause requiring the respondent-attorney to show cause within 30 days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined.

D. Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, this Court shall set the matter for prompt hearing before one or more judges of this Court, provided however that if the disciplinary proceeding is predicated upon the complaint of a Judge of this Court the hearing shall be conducted before a panel of three other judges of this Court appointed by the chief judge, or, if there are less than three judges eligible to serve or the chief judge is the complainant, by the Chief Judge of the Court of Appeals for this Circuit.

FRDE **RULE VI**

Disbarment on Consent While Under Disciplinary Investigation or Prosecution

A. Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

1. the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;

2. the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;

3. the attorney acknowledges that the material facts so alleged are true; and

4. the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself or herself.

B. Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.

C. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

FRDE **RULE VII**

Reinstatement

A. After Disbarment or Suspension. An attorney

suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the Court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of this Court.

B. Time of Application Following Disbarment. A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

C. Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the chief judge of this Court. Upon receipt of the petition, the chief judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more judges of this Court, provided however that if the disciplinary proceeding was predicated upon the complaint of a judge of this Court the hearing shall be conducted before a panel of three other judges of this Court appointed by the chief judge, or, if there are less than three judges eligible to serve or the chief judge was the complainant, by the chief judge of the Court of Appeals for this Circuit. The judge or judges assigned to the matter shall within 30 days after referral schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

D. Duty of Counsel. In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.

E. Deposit for Costs of Proceeding. Petitions for

reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Court to cover anticipated costs of the reinstatement proceeding.

F. Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the judge or judges before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

G. Successive Petitions. No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

FRDE **RULE VIII**

Attorneys Specially Admitted

Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

FRDE **RULE IX**

Service of Papers and Other Notices

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the last address of record. Service of any other papers or notices required by these Rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the last address of record; or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

FRDE **RULE X**

Appointment of Counsel

Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplinary agency of the highest Court of the state wherein the Court sits, or the attorney maintains his or her principal office in the case of the Courts of appeal, or other disciplinary agency having jurisdiction, this Court shall appoint as counsel one or more members of the Bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these rules, provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

FRDE **RULE XI**

Duties of the Clerk

A. Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of this Court shall determine whether the Clerk of the Court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of this Court

shall promptly obtain a certificate and file it with this Court.

B. Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another Court, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk shall promptly obtain a certified copy or exemplified copy of the disciplinary judgment or order and file it with this Court.

C. Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other Court, the Clerk of this Court shall, within ten days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other Court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

D. The Clerk of this Court shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

FRDE **RULE XII**

Jurisdiction

Nothing contained in these Rules shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States code or under Rule 42 of the Federal Rules of Criminal Procedure.

FRDE **RULE XIII**

Effective Date

Any amendments to these disciplinary enforcement rules shall become effective immediately upon the entry and filing of any Order, provided that any formal disciplinary proceedings then pending before this Court shall be concluded under the procedure existing prior to the effective date of these amendments.